

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD PEREZ,	§
	§
Defendant Below-	§ No. 341, 2010
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID 30111075DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 6, 2010
Decided: August 10, 2010

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 10th day of August 2010, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Richard Perez, filed this appeal from the Superior Court's denial of his motion for modification of sentence. Perez's motion sought credit toward his Delaware sentence for 210 days he claims he spent in a Delaware prison awaiting trial on his Delaware charges. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Perez's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Perez was sentenced on September 11, 1992 in Harford County, Maryland to a twenty-year mandatory term of incarceration. Immediately thereafter, Perez was transferred to Delaware to stand trial on a pending rape charge. On April 26, 1993, Perez pled guilty to one count of third degree unlawful sexual intercourse, and the Superior Court immediately sentenced him to seven years at Level V incarceration. After the Delaware sentencing proceeding, Perez was transferred back to Maryland to serve his Maryland sentence. On January 27, 1996, Perez was transferred back to Delaware pursuant to an Interstate Corrections Compact Agreement to complete service of his Maryland sentence and then his Delaware sentence. Perez has filed various unsuccessful motions attempting to receive credit for time he has served in prison, to be applied toward both of his respective sentences.¹

(3) In his latest motion, Perez argued that the 210 days that he spent in prison awaiting trial in Delaware, from September 1992 to April 1993, should be applied toward his Delaware sentence. In support of his argument, Perez cites to 11 Del. C. § 3901(c), which provides that “[a]ny

¹ See, e.g., *Perez v. State*, 2002 WL 549401 (Del. Dec. 12, 2002).

period of actual incarceration of a person awaiting trial...shall be credited to the person in determining the termination date of the sentence.”²

(4) Perez ignores, however, § 3901(b) and § 3901(d), which provide, respectively, that prison sentences may not run concurrently and that the sentence for a defendant who is currently imprisoned under another sentence shall begin to run upon the expiration of the earlier sentence.³ In Perez’s case, he was sentenced by the Maryland court in September 1992 and was serving his Maryland sentence, albeit in Delaware, while awaiting trial on his Delaware criminal charges. He is not entitled to credit toward his Delaware sentence for time he served toward his Maryland sentence.

(5) We have reviewed the record and the parties’ respective positions carefully. We find it manifest that the judgment below should be affirmed on the basis of the Superior Court’s well-reasoned decision dated May 18, 2010.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

² 11 Del. C. § 3901(c).

³ 11 Del. C. §§ 3901(b), (d).